

To: Noga, Vaughn[Noga.Vaughn@EPA.GOV]
From: Robbins, Chris
Sent: Wed 4/5/2017 10:38:33 PM
Subject: Fwd: 4/4 EPA Research News Clips

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From: "McGuinness, Moira" <McGuinness.Moira@epa.gov>
Date: April 4, 2017 at 2:15:53 PM EDT
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EPA General

At Trump's EPA, going to work can be an act of defiance Los Angeles Times

How Trump Can Depoliticize Federally Funded Science Daily Caller

EPA: Budget undercuts Pruitt's promise to states Greenwire

Federalism has been U.S. EPA Administrator Scott Pruitt's refrain since his Senate confirmation hearing. Pruitt has promised to rejuvenate his agency's partnership with the states, looking to work with them more closely as EPA sets out to protect the environment. Much of that partnership, however, is fueled by federal dollars, and President Trump's proposed budget cuts for EPA, if sustained by Congress, could undermine Pruitt's pledge to state environmental regulators.

Alexandra Dunn of the Environmental Council of the States told E&E News that EPA provides a substantial portion of the funding for several state-delegated environmental programs.

"To have cooperative federalism, you have to have financial support," said Dunn, executive director and general counsel of the state environmental agency leaders' association. "There is a fairly significant disconnect going on."

When asked about Trump's planned budget cuts for EPA, Pruitt has said his agency would be partnering with states to help achieve clean air and clean water.

"This attitude in Washington, D.C., that people in Texas and Oklahoma and Kansas and Colorado and the rest of the country don't care about the water they drink or the air they breathe and are not going to take care of the air and the water locally and states, I just don't believe that," Pruitt said on "Fox News Sunday" earlier this week (**E&E News Daily**, April 3).

"That narrative is something we reject," the EPA chief said, "and we look forward to partnering with states across the country to achieve good outcomes."

Asked for comment for this story, an EPA spokesman referred E&E News to praise from Republican governors for EPA under Pruitt's leadership, including his move to roll back the Clean Power Plan and the administrator's effort to build new relationships with state leaders.

Yet under the agency's proposed budget plan, those relationships with the states would see less funding, at least in several key EPA grants.

An **internal EPA budget document** gives greater detail on what would be reduced at EPA under Trump's plan for the agency. The agency's overall funding would be slashed by 31 percent, or \$2.6 billion, by targeting several specific programs, including EPA's categorical grants that help support state agencies.

Under the president's proposal, those categorical grants, currently funded at \$1.08 billion, would be cut by nearly 45 percent, or more than \$480 million. Those grants help fund state agencies in monitoring water systems, combating air pollution, redeveloping toxic sites and several other functions.

Many of the grant programs that need protection from budget cuts — what Dunn calls a "super core" administered under environmental laws like the Clean Air Act, Safe Drinking Water Act, and Resource Conservation and Recovery Act — would have their funding cut or even be eliminated under Trump's budget plan.

"It absolutely makes no sense that there is no fiscal partnership," Dunn said.

Other association heads representing state environmental regulators offered similar sentiments to E&E News.

"I don't understand that dichotomy that Pruitt has. He really does stress this, this federal-state cooperation. It sounds really nice, but it doesn't work if you cut the budget," said Alan Roberson, executive director of the Association of State Drinking Water Administrators.

Bill Becker, executive director of the National Association of Clean Air Agencies, said, "The states are heaping mad."

"There is an inconsistency in the administration's argument to delegate authority out of Washington, D.C., to the states while eviscerating funding to those same state and local agencies," Becker said.

Both Becker and Roberson would see their members' priorities cut under the president's budget.

One EPA program, state and local air quality management grants, would drop from \$228 million to \$159 million under Trump's plan. Another, Public Water System Supervision grants, would fall from \$101 million to \$71 million.

Roberson said the proposal could lead to fewer inspections, less training and less technical assistance, as well as layoffs and furloughs at state agencies.

"I'm not sure what our guys are going to do if those grants get cut by X amount," Roberson said.

Congress' turn

The Trump administration has only released to the public so far a budget blueprint, or "skinny budget," with a more detailed version to be disclosed in early May. Yet representatives for state environmental agencies have begun to focus their attention on Capitol Hill to restore EPA's programs.

"The dialogue will obviously move to Congress, where there will be an ability to course-correct some of these proposals," Dunn said. "With the appropriators, there is a dialogue. That is where programs are restored, programs are changed."

She noted that the National Governors Association last week sent a letter to congressional leaders, not the White House, about the budget, in which they noted federal funds make up an average of 31 percent of state budgets.

Roberson said he was drafting a letter to congressional appropriators as well regarding his members' needs.

Clint Woods, executive director of the Association of Air Pollution Control Agencies, said his group will highlight "success stories," adding lawmakers tend to make their own budget for EPA.

"We understand that U.S. EPA is continuing to develop the details for potential FY 2018 priorities and our Association will be highlighting the importance of continuing these air quality success stories in the weeks and months ahead," he said in an email.

"It is worth noting that Congress has virtually never adopted a President's request for U.S. EPA or State and Local Air Quality Management Grants."

Dunn said state agencies should look to Congress to restore funding while working with EPA to give them more flexibility with federal grants that they do receive from the agency.

"The first response is the hope that Congress will look more favorably on these categorical grants," Dunn said. "The second is to work with EPA to maximize the flexibility that states have to spend the money they do get."

Dunn said given the Trump administration's focus on the states, it should consider more funding for EPA's multipurpose grants.

"We are asking the administration to put some of this money that is cut from categorical grants back into multipurpose grants, which allows states to expand resources on their priorities," Dunn said. "That is one way the administration could support states, by supporting grants that give states more flexibility to choose."

Under the president's budget plan, those grants, currently slated for \$21 million, are zeroed out.

EPA: Retiring scientist blasts Pruitt, laments low morale Greenwire

A recently retired U.S. EPA scientist told Administrator Scott Pruitt last month that he's "becoming increasingly alarmed" about the Trump administration's direction on environmental policy and employee morale.

In a four-page letter to Pruitt on his last day at the Seattle-based Region 10 office, Michael Cox described staff morale as "the lowest since I started in 1987."

Chief among concerns expressed by Cox in his letter Friday are Pruitt's remarks on national television that carbon dioxide is not the main contributor to climate change and dismissal of the Paris Agreement.

"You will continue to undermine your credibility and integrity with EPA staff, and the majority of the public, if you continue to question this basic science of climate change," Cox wrote.

Pruitt's remarks on CO₂ are currently being reviewed by EPA's scientific integrity official (E&E Daily, April 3).

The former Oklahoma attorney general sounded more cautious about climate change in a weekend interview on Fox News, while maintaining the Paris Agreement is a "bad deal" for the United States.

Cox also blasted a March 28 agency email headlined "Our Big Day Today" that greeted staff on the day President Trump came to EPA headquarters in Washington, D.C., to sign an executive order targeting much of the Obama administration's climate work.

"The question many of us had was who is 'our' referring [to]?" Cox wrote. "Was it the many EPA career staff that worked for years developing the work that was rescinded or revoked? Was it the EPA career staff that should be jubilant the President came to EPA to poke a finger in our eye (or as many people indicated to give us the finger)?"

He added, "We were frankly insulted that the President would come to EPA to announce that he is overturning the work to battle the most urgent environmental problem of our generation — climate change. It was beyond comprehension that an Administration could be so arrogant and callous."

The letter challenges Pruitt to provide more details on planned budget cuts for EPA, which could result in \$2.6 billion less funding and 3,200 fewer employees at the agency. An internal [memo](#) first reported by *The Washington Post* suggests climate positions would be hit especially hard ([Climatewire](#), April 4).

"The message we are hearing is that this Administration is working to dismantle EPA and its staff as quickly as possible," Cox wrote.

Cox accused Pruitt of continuing to "demonize EPA," appointing political staff who are "openly hostile" to the agency and disregarding the efforts regional staff already make to coordinate closely with states and tribes.

"Over the last several years, there has been a lack of commitment to state partnership," Pruitt said in a recent interview ([E&E Daily](#), April 3).

Cox called on Pruitt to step back and listen to EPA career employees.

In an [interview](#) yesterday with a Seattle-based NBC affiliate, Cox invited Pruitt to visit Region 10, which encompasses the Pacific Northwest and Alaska, to see the impacts of climate change.

Cox worked on water issues — toxics, groundwater and water contamination in Region 10. He also worked at EPA headquarters for 10 years in the Office of Ground Water and Drinking Water and Office of Science and Technology. According to a biography, he was the team leader for three regulations: lead in drinking water, disinfection byproducts in drinking water and the Great Lakes Water Quality Initiative.

Cox could not be reached for comment this morning.

EPA did not respond to an inquiry about the letter.

Research That Saved Bald Eagle at Risk as New EPA Settles In Daily Environment Report

Posted: Apr 4, 2017, 8:45 AM EDT

By [Lauren Coleman-Lochner](#)

Congress and the Trump administration are planning sweeping changes in how science is used to govern public health.

Controversy over climate change may be getting all the attention right now, but legislation under consideration would transform the way the Environmental Protection Agency combats pollution, identifies harmful pesticides and classifies everyday toxins, such as laundry detergent, window cleaner and clothing dye.

President Donald Trump has vowed to flatten regulatory hurdles for American business, and Congress's proposed EPA rules for science would make commerce easier. The president has proposed a 31 percent budget cut for the EPA and installed an opponent of the agency, Scott Pruitt, as its leader. Pruitt began the new era of industry over environmental regulation last week by reversing years of scientific opinion, rejecting a proposed ban on chlorpyrifos, a pesticide used on fruits and vegetables that has links to brain damage.

Bills under deliberation would open EPA expert advisory panels to industry representatives and mandate the use in formulating policy of what sponsors call the "best available science," which opponents say would exclude widely used research methods and delay action. An EPA program that certifies consumer products that are free of hazardous substances could also be in peril.

Lawmakers and environmentalists are predictably split on the legislation.

The bills "really pull the rug out from under the independence of the scientific process," said Thomas Burke, a professor at the Johns Hopkins University Bloomberg School of Public Health in Baltimore and former EPA adviser. "We're going to turn back the clock on public health. This is the most devastating blow I've ever seen."

'Trust-Me Science'

Rep. Lamar Smith (R-Texas), who chairs the House committee that oversees the EPA, said that "the days of trust-me science are over."

"Open and honest science should be at the core of the EPA's mission rather than rules that end up costing American taxpayers billions of dollars," Smith said in a [statement](#) last week.

That was Smith's rationale for the Honest Act, which [passed](#) the House 228-194 on March 29. It would bar the EPA from creating any regulation based on data that's not publicly available or can't be replicated.

The law would mean eliminating studies that cite epidemiological research, such as the one that led to the banning of the pesticide [DDT](#), which was shown to cause cancer in humans and deadly effects in birds like bald eagles. [Leaded gasoline](#) was also taken off the market due to epidemiological research, which exposed its link to brain damage in children.

'Cynical Time'

A day after the House approved the Honest Act, the [EPA Science Advisory Board Act](#) passed 229-193, allowing industry representatives to serve without special permission, while excluding scientists whose research receives EPA funding. Doing that would prevent extreme views, according to its sponsor, Rep. Frank Lucas (R-Okla.).

"We live in a very cynical time, where people question everything the government does," Lucas said in an interview. Revising the makeup of the board "creates a more balanced situation" and "will move the standard that is something closer to the middle no matter who is in charge of the federal government."

But the legislation undercuts the EPA's mission, said Rep. Eddie Bernice Johnson (D-Texas), the ranking Democrat on the House committee overseeing the EPA.

The bill "makes it easier for industry representatives with conflicts of interest to serve on advisory boards at the EPA while making it harder for scientific experts, all while slowing the regulatory process," Johnson said in a statement.

Better Data

The Better Evaluation of Science and Technology Act, also called the BEST Act, aims to decrease the number of lawsuits filed against government agencies and reduce questions about the quality of underlying data in their regulations, its sponsor, Sen. James Lankford (R-Okla.), said in a statement.

Yogin Kothari of the Union of Concerned Scientists called it a "Trojan horse transparency bill" that weakens regulations by casting doubt on the science used to back them. It could have the effect of excluding newer findings, which may reveal harm undetected by older research, he said.

These bills come at a time when an update of the Toxic Substances Control Act, signed into law last year, could limit the ability of states to enact regulations that are tougher than federal standards. They still must be approved by the Senate, where they could be stalled by filibusters.

Household Toxins

Environmentalists say they fear a stroke of a pen could eliminate the EPA's [Safer Choice](#) program. Congress has tried to scuttle it before. The program approves household products such as laundry detergent and window cleaner that are free of hazardous substances.

Companies governed by the program say they favor it. Last month, almost 200 corporations, including Wal-Mart

Stores Inc., Procter & Gamble Co., Dow Chemical Co. and BASF, wrote to Pruitt, saying it "helps consumers, businesses, and procurement officers/purchasers to identify products that go beyond regular safety standards."

But many of the same industries that fought restrictions on DDT and leaded gasoline in the past are trying to block regulation now, said Daniel Rosenberg, senior attorney of the health and environment program at the [Natural Resources Defense Council](#) in Washington.

"If a bill would make it harder for EPA to protect the public from chemicals like lead, mercury and asbestos, it's something that no reasonable member of Congress should support," he said.

EPA: GOP looks to skirt hefty price tag for 'secret science' bill **E&E Daily**

When Rep. Lamar Smith (R-Texas) two years ago introduced a bill known as the "Secret Science Reform Act," he quickly hit a big fiscal roadblock: an estimated \$250 million annual price tag for U.S. EPA to ensure that the scientific research data underlying studies used in drafting new regulations became publicly available. Under the Trump administration, however, EPA has hit upon a solution: Ignore any studies that don't preemptively comply with the legislation's disclosure standards, according to a recently released Congressional Budget Office [analysis](#) of H.R. 1430, a recently reintroduced version of the bill that passed the House last week.

Based on information from EPA officials, the budget office "expects that the agency would choose to rely only on studies that already meet the act's requirements" when undertaking new rulemakings and other regulatory activities, the analysis says. "That manner of implementing the act would significantly cut the number of studies used to support the EPA's actions for the first few years following enactment."

Exactly how significantly is disputed, given that EPA employees rely on some 50,000 studies each year to do their jobs. A spokeswoman for Smith, who leads the House Science, Space and Technology Committee, suggested yesterday that the research data collected to reach scientific conclusions nowadays often see daylight in the course of the normal publication process.

"Scientists should serve the public interest," the spokeswoman, Kristina Baum, said in an email. "This movement has become widespread with major scientific journals that all data be publicly available to improve the integrity and openness of the data."

Pat Michaels, director of the Center for the Study of Science at the libertarian Cato Institute, agreed. Michaels also saw a bonus to the extent that the bill would put researchers on notice that "you'd better be forthcoming about your data and your methods and your code."

But in the air quality arena, which represents a large slice of EPA's regulatory portfolio, the agency's preferred approach "would typically exclude most studies" because researchers don't get funding to make data available, said Jon Samet, director of the University of Southern California's Institute for Global Health. Samet also led EPA's Clean Air Scientific Advisory Committee, which furnishes outside expertise in setting federal air pollution standards for ozone and other major pollutants, from 2008 until late 2012.

Seconding that view are critics of [H.R. 1430](#), dubbed the "Honest and Open New EPA Science Treatment (HONEST) Act." If the bill were to become law, EPA would be "forced to use far less science to create public health and safety measures, and to create fewer of those protections and safeguards," said Sarah Lamdan, a law library professor at the City University of New York, noting that the bill would also cap the agency's annual spending on implementation at \$1 million, a pittance by federal standards.

Moreover, journals only ask scientists to agree to share their "results data," said Gretchen Goldman, research director at the Center for Science and Democracy, an offshoot of the Union of Concerned Scientists. Making public a computer model and the raw data that went into it would be a different story, Goldman said, and could raise "a lot of intellectual property concerns."

At a minimum, the willingness of EPA leaders to consider implementation represents a turnaround from the stance taken by the Obama administration two years ago. Then, the White House threatened to veto [H.R. 1030](#), the version of the bill introduced in the 114th Congress, on the grounds it would saddle EPA with costly new mandates while undercutting regulators' ability to protect health.

Now, EPA officials "fully support" the principles of the "HONEST Act" and "look forward to working with Congress throughout the legislative process to learn more about the agency's legal requirements" should the bill becomes law, spokesman John Konkus said in an email.

Like its predecessor, H.R. 1430 would bar EPA from proceeding with new regulations unless all underlying "scientific and technical information" is publicly available online "in a manner that is sufficient for independent analysis and substantial reproduction of research results."

Although the bill says that EPA itself doesn't have to disseminate that information, the Congressional Budget Office estimated in 2015 that the agency would initially need \$250 million per year to meet those requirements, a figure that opponents repeatedly raised before the bill died in the Senate last year.

Smith last week labeled that estimate a misinterpretation and predicted that the true cost would be "minuscule." But in its analysis of the "HONEST Act," CBO predicted that the yearly tab could top \$100 million if EPA continues to rely on the same volume of scientific research as in the recent past. In part, the money would go to obtaining all of the underlying data for specific studies, formatting the information for public use, and providing access to the needed computer codes and models, the analysis said. Under the "minimal funding" approach currently favored by EPA, however, the five-year cost from 2018 through 2022 would be about \$5 million, according to the budget office.

The bill won House approval last Wednesday on a mostly party-line vote (*E&E Daily*, March 30). Foes like Goldman acknowledge that they're worried that the bill has a better chance of final passage in the 115th Congress.

The bill also has the backing of influential business lobbies like the U.S. Chamber of Commerce and American Chemistry Council. Attempts to get comments from both were unsuccessful yesterday.

Still, any contested legislation needs 60 votes to clear the Senate, and Republicans currently hold a 52-seat majority. The most recent test of Democrats' views of the bill came in April 2015, when a companion version introduced by Sen. John Barrasso (R-Wyo.) won approval from the Environment and Public Works Committee on a 11-9 party-line vote (*E&E News PM*, April 28, 2015).

Among those voting "no" was Sen. Tom Carper (D-Del.), now the committee's ranking member, who indicated yesterday that his views haven't changed.

Since its founding in 1970, EPA "has used the best science available to protect the health of the American people," Carper said in a statement to E&E News. "Any efforts to suddenly limit the data the EPA uses to keep Americans safe is nonsensical and, frankly, irresponsible."

Science Takes Back Seat to Industry Profits in Trump's New EPA Daily Environment Report

By Lauren Coleman-Lochner

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The climate change debate may be getting all the attention right now, but legislation under consideration would transform the way the Environmental Protection Agency combats pollution, identifies harmful pesticides and classifies everyday toxics, such as laundry detergent, window cleaner and clothing dye.

President Donald Trump has vowed to flatten regulatory hurdles for American business, and Congress's proposed EPA rules for science would make commerce easier. The president has proposed a 31 percent budget cut for the EPA and installed an opponent of the agency, Scott Pruitt, as its leader. Pruitt began the new era of industry over environmental regulation last week by reversing years of scientific opinion, rejecting a proposed ban on chlorpyrifos, a pesticide used on fruits and vegetables that has links to brain damage.

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EPA Leaders Trashed Staff Comments Critical of Data Overhaul Bill: Officials Daily Environment Report

By Brian Dabbs

EPA staff comments on extensive burdens linked to a controversial House-passed bill never made it to the Congressional Budget Office.

That's because personnel in the Environmental Protection Agency's leadership circle quashed the comments, choosing instead to say there would be no burden whatsoever if the bill became law, current EPA officials and an email obtained by Bloomberg BNA say.

The legislation (H.R. 1430), which passed the House March 29 with only three Democrats in support, would require all research used in agency actions to be made public. The staff comments decried the bill, arguing it would cost the agency at least \$250 million a year while threatening agency know-how and jeopardizing personal and confidential business information. Those current officials, along with a former career official, said they have never witnessed such a dramatic contradiction between staff-crafted comments and the official evaluation passed onto the budget office.

'Complete Disregard'

"This is a complete disregard," said an agency official who helped write the comments. But "it's consistent with everything else we've seen. Basically all the actions of our organization are being curtailed from every direction. This is just another piece of that, and it doesn't take a big step to connect those dots."

An email obtained by Bloomberg BNA illustrated the inner-workings.

"The administrator's office decided not to send our responses forward," the email said. "[The Office of Congressional and Intergovernmental Relations] fought for the points we made, but [the administrator's office] ultimately decided to send a response back to [the Congressional Budget Office (CBO)] that said no cost, no comment." Bloomberg BNA is not publishing the email to safeguard the identities of those involved.

The bill would force the EPA, in moving forward with actions such as regulations, risk assessments and others, to only use data that is publicly available online and reproducible. Critics say it would require a costly database. Some studies also shouldn't be reproduced because they may harm humans, those critics add.

Research used in EPA rulemaking is often shielded from the public. The comments tout the Open Government Initiative, which the EPA finalized a plan for in December, as the right way to achieve the transparency goals of the bill.

But agency leadership staunchly backs the legislation, according to transition team spokesman John Konkus.

Konkus declined to speak to the staff comments, saying internal deliberations shape a final assessment that "helps ensure EPA is responsive to the president and the American people." The CBO relies on agencies to understand consequences of legislation. Budget law also directs agencies to provide the material to the budget office in order to boil down a budget assessment, often referred to as a "score."

Deliberations Typical

Stan Meiburg, the career employee who took on the role as acting deputy administrator under Administrator Gina McCarthy, said the scenario marks a departure from typical agency discussions over CBO comments.

"I don't recall cases where comments are just discarded," Meiburg told Bloomberg BNA. "There's typically a lot of dialogue, a lot of conversation and discarding would not be done unadvisedly or lightly."

"There would be burden and if that was really blown off, that's not a good thing," he said.

Administrator Scott Pruitt, who landed at the EPA in February after a lengthy, bitter nomination process, vows to change agency culture. A new EPA will restore primacy of the states in environmental protection and base actions on sound science, rather than ideological convictions, he says.

As Oklahoma attorney general, Pruitt sued the EPA over a wide range of actions, including the Clean Power Plan and the Clean Water Rule. Critics say he's bent on defanging agency authority while providing industry free reign to pollute.

Staff Complaints

The bill, authored by House Science, Space and Technology Committee Chairman Lamar Smith (R-Texas), says the agency should only spend \$1 million a year on the new protocol, derived from appropriations otherwise approved.

But the staff comments say the legislation, known by the acronym the HONEST Act, would cost at least 250 times that.

"In addition to spending dollars and staff time on requesting and getting data from study authors, creating [information technology] infrastructure and a data management system to manage, store, and archive large volumes of data, and making the data available in a format that is useful and accessible to the public, EPA would also have to spend dollars and staff time combing through these extensive datasets to find and redact Personally Identifiable Information and Confidential Business Information," the comments say. The bill directs the EPA to disclose that redacted information after a requester signs a confidentiality agreement.

The fear over compromised personal and business information would deter industry and academics from working with the agency, the comments say. That would all but eliminate EPA access in many cases to the highest-quality research, they add.

EPA, CBO Communication

The CBO estimate for the [bill](#), published the same day the measure passed the House, says the agency could spend anywhere from a few million to more than \$100 million annually on the new rules, but based on assurances from the agency the \$1 million annual spending is a safe bet.

"EPA officials have explained to CBO that the agency would implement H.R. 1430 with minimal funding and generally would not disseminate information for the scientific studies that it uses to support covered actions," the estimate says. "That approach to implementing the legislation would significantly reduce the number of studies that the agency relies on when issuing or proposing covered actions for the first few years following enactment of the legislation."

That assurance, however, suggests EPA leadership discussed the consequences of the legislation with the CBO. The EPA official who helped craft the comments said lower-level staff is in the dark about how and when that information was communicated, in light of the apparent "no cost, no comment" response.

Konkus declined to comment on that communication, and a CBO spokeswoman didn't respond to a Bloomberg BNA request for comment.

Future of the Bill

Sen. John Barrasso (R-Wyo.), the chairman of the Senate Environment and Public Works (EPW) Committee, which has jurisdiction over the bill, sponsored a previous iteration of the bill in the last Congress.

A spokesman for Barrasso, Mike Danylak, declined to comment on whether the committee aims to advance the measure in the foreseeable future. Danylak, however, indicated support. "The EPA's science should be open and transparent and the Senate Environment and Public Works Committee will continue to work to achieve these goals," he told Bloomberg BNA.

Meanwhile, Kristina Baum, a spokeswoman for Smith, said her boss supports interaction between the EPA and the CBO, while also rejecting the concerns raised in the EPA staff comments.

"It is not accurate to say that there will be large amounts of studies that the EPA cannot use as the societal incentive is for researchers to make the science available for the benefit of its use for the good of the public," she told Bloomberg BNA. The staff comments also pointed out the academic and industry drive to publicize research but indicated that incentive may be outweighed by concerns over compromised personal and business information.

But Barrasso's counterpart on the EPW Committee, ranking member Tom Carper (D-Del.), hinted at opposition.

"Any efforts to suddenly limit the data the EPA uses to keep Americans safe is nonsensical and, frankly, irresponsible," Carper told Bloomberg BNA in a statement.

To contact the reporter on this story: Brian Dabbs in Washington at bdabbs@bna.com

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EPA: Booker, Pallone protest Trump outside N.J. lab E&E Daily

Sen. Cory Booker and Rep. Frank Pallone, both New Jersey Democrats, rallied outside a U.S. EPA laboratory in Edison, N.J., to protest President Trump's proposed spending cuts.

Last week, the president signed an executive order to undo a number of Obama administration actions, including the Clean Power Plan, to cut greenhouse gas emissions from the energy sector.

Yesterday, the lawmakers joined environmental activists in slamming the new administration as "anti-science."

They were outside EPA's Region 2 laboratory and environment center. The president's proposed budget would slash EPA funding by 31 percent.

"We are here to tell the EPA employees that we have your back and that we will keep fighting to protect America's environment," said Jeff Tittel, director of the New Jersey Sierra Club.

"We are standing up to defend the EPA lab in Edison to make sure they are able to continue their important work and research," he said. "We will work to defend this facility so it can keep conducting research and testing on drinking water, Superfund sites and other environmental hazards like the Deepwater Horizon oil rig explosion in the Gulf of Mexico."

Tittel described the New Jersey lawmakers as "environmental champions" in a statement.

Booker has a 98 percent career score from the League of Conservation Voters and sits on the Senate Commerce, Science and Transportation Committee, and the Environment and Public Works panel. Pallone has a 96 percent career LCV score and is the ranking member on the House Energy and Commerce Committee. Also present were state Sen. Patrick Diegnan Jr. (D) and members of the American Federation of Government Employees, which represents EPA workers.

ACE

The Corporations Defying Trump on Climate Change Are Not Your Heroes New Republic

BUDGET: EPA proposal cuts hundreds of climate change employees Climatewire

A memo detailing how U.S. EPA would cut its budget by one-third shows that the agency would eliminate hundreds of employees working on climate change, including 20 lawyers who provide support for the Clean Power Plan. Overall, EPA would reduce staffing from about 15,000 to a full-time equivalent (FTE) ceiling of 11,547, according to the [document](#), which was first [reported](#) by *The Washington Post*.

Acting Chief Financial Officer David Bloom sent the blueprint to the heads of EPA departments on March 21. They are supposed to provide feedback and explain how they would make the cuts and still fulfill statutory requirements. Acting assistant administrators are meant to certify the budget plan by April 25.

"This resource level will require taking a comprehensive look at our priorities and thinking differently about the best ways to accomplish our core statutory responsibilities," Bloom wrote.

The proposal lists many programs slated for elimination as duplicative, outside EPA's essential duties or "mature." It also seeks to fund some programs with more industry fees.

President Trump has proposed halving the budget of EPA's Office of Research and Development. The memo shows that would mean eliminating \$19.4 million of EPA's climate change research that is conducted in coordination with the U.S. Global Change Research Program and cutting 47 FTE. It would also mean getting rid of \$10.6 million for the Science to Achieve Results grant program, which funds research at universities.

As previously reported, the proposal would eliminate the \$69.7 million Climate Protection Program, which houses voluntary partnerships like Energy Star. It would cut 224 FTE from that program.

EPA would eliminate \$7.2 million and 11 FTE for environmental education, and \$1.8 million and 12 FTE for the Office of Public Engagement. EPA would also cut \$2 million and 40 FTE for environmental justice.

In addition, the proposal would move money around at the Office of the General Counsel, nixing lawyers working on the Obama administration's climate standards for power plants, which Trump has moved to gut.

Outside of climate, the budget document attempts to shift responsibility for many federal environmental laws to states. It would cut categorical grants like those for air quality, lead, pesticides enforcement and diesel emissions, resulting in a reduction to \$597 million from \$1.1 billion.

Bill Becker, head of the National Association of Clean Air Agencies, which represents state air regulators, said that taken together, the cuts are dramatic, and states would have trouble footing even more of the bill than they already do.

"Everyone is assuming that Congress will come to the rescue, but the problem is Congress is responding to a budget the administration has proposed, and it's doubtful that they're going to go in blindly," he said.

He added that Congress has been legitimately criticizing EPA for failing to publish air standard guidance on time, but this budget would make that even harder to accomplish.

The proposal also assumes the agency would see a decrease in new regulatory actions and would cut 24 FTE from EPA's Regulatory, Economic, Management and Analysis program, which evaluates the impact of regulations on business and the economy.

The blueprint directs two EPA departments to look at legislative options for privatizing Energy Star, the energy efficiency labeling program for consumer products. It aims to do something similar for vehicle emissions standards. EPA appears to want to recover the costs of ensuring vehicles meet standards by instituting more fees on industry, which would require action from Congress and likely create a budget shortfall in the meantime.

EPA fights environmentalists' intervention in 'jobs' review suit Inside EPA

April 3, 2017 -- 5:46 PM

EPA is fighting environmentalists' request to intervene on the agency's behalf in its appeal of a district court ruling that would force it to conduct a sweeping review of how Obama-era Clean Air Act (CAA) policies have affected jobs in the coal and energy sectors, arguing that the environmentalists face no harm from the suit.

The Department of Justice (DOJ) filed a [March 31 brief](#) on EPA's behalf in the appeal, *Murray Energy, et al., v. EPA, et al.*, opposing intervention by three West Virginia environmental groups led by the Mon Valley Clean Air

Coalition that asked the join the case after the 2016 election, arguing that they could not trust the then-incoming Trump administration to protect their interests in the case.

But DOJ notes that since Inauguration Day it has continued to fight the coal sector plaintiffs' claims, including filing a [merits brief](#) continuing the Obama administration's defenses against the ruling, and arguing that the district court ruling setting a short deadline for completing the jobs study was wholly unjustified.

"Mon Valley concedes that EPA adequately represented its interest from the time this suit was filed through final judgment. Mon Valley claims, however, that the government could change its approach to this suit under the Trump Administration. EPA's continued prosecution of its appeals in this case belies that claim, but Mon Valley would not be entitled to intervene even if the agency changed course," DOJ's new brief says.

Mon Valley and its allies focused their intervention request on the coal companies' bid for a ruling that would not only force EPA to conduct a study of jobs lost to CAA regulations, but block implementation of any new or future air rules for the energy or coal industries until such a study had been completed.

District Judge John Preston Bailey held in his [Jan. 11 ruling for the plaintiffs](#) that the air law's section 321(a), which requires "ongoing" studies of job losses, does not allow that remedy. And DOJ notes that the coal companies have now missed their deadline to appeal that portion of the decision, meaning it will stand no matter how the 4th Circuit decides EPA's own appeal.

"Given that EPA cannot modify or withdraw any CAA requirement due to a section 321(a) evaluation, the only way that the evaluations required by the injunction could harm Mon Valley is if Congress decided to act in response to them. But the possibility of future legislative action is far too speculative to merit intervention," DOJ's brief argues.

Section 321(a) says EPA must perform "continuing evaluations of potential loss or shifts of employment which may result" from air rules and their implementation. Murray and its allies said the agency has long neglected that duty, and Bailey agreed, setting a July 1 deadline for EPA to perform an evaluation of employment shifts since 2009.

DOJ has argued both in the appeal and to the district court that the deadline is unfeasible and that section 321(a) does not impose a mandatory duty with a fixed deadline, which is necessary to support a suit over its failure to complete the studies.

EPA Still Defending Obama-Era Resistance of Job Impact Review **Daily Environment Report**

By [Dean Scott](#)

The Environmental Protection Agency is still sticking with its Obama-era stance in fighting a lower court decision directing the agency to consider potential coal job losses from air pollution regulations—a move seemingly out of step with President Donald Trump's efforts to relax rules for the coal industry.

The EPA's position—that Murray Energy Corp. could not demonstrate that it was harmed by the EPA's failure to conduct a detailed job analysis required by Section 321 of the Clean Air Act—is unchanged, according to the March 31 [brief](#). The government "has not shifted its position in this case—it is pursuing this appeal on the same legal grounds it articulated in the district court," said a March 31 brief filed on behalf of the agency ([Murray Energy Corp. v. Adm'r of EPA](#), D.C. Cir., No. 16-2432, *brief filed 3/31/17*).

The U.S. District Court for the Northern District of West Virginia ordered the review to be completed by July 1.

Section 321 of the Clean Air Act requires the EPA to "conduct continuing evaluations of potential loss or shifts of employment which may result" from its actions, including an investigation of "threatened plant closures, or reductions in employment" that could result from agency regulatory and other actions.

The EPA in a Feb. 21 brief argued that Murray Energy Corp., which sued to force the agency to do the detailed

jobs review, could not demonstrate that it suffered harm from the agency's failure to conduct the analyses.

Industry groups including the U.S. Chamber of Commerce have argued that the EPA should be doing more thorough economic analyses than it has done in the past, including reviews of more nuanced impacts on employees such as reductions in hours attributed to agency regulations.

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CSS

Environmentalists Back TSCA Prioritization Proposal But Seek Tweaks Inside EPA

Environmental groups are generally supportive of EPA's proposal for how it will prioritize the thousands of existing chemicals for risk evaluation, and appear largely joined by California's environmental agency, though they are recommending tweaks to EPA's approach, while industry groups are outlining their concerns with the agency's proposal.

The stakeholders' comments were submitted before a March 20 deadline in response to EPA's Jan. 17 proposal, which lays out a four-step process for implementing a mandate under the revised Toxic Substances Control Act (TSCA) that the agency screen existing chemicals as either high- or low-priority for the purposes of further review.

Existing chemicals are those that were in commerce in 1976 when the original TSCA was enacted, and were at that time largely grandfathered under the law. The overhaul requires EPA to prioritize and assess this backlog of chemicals, and directed EPA to draft several rules by June 2017 laying out a framework to implement this. EPA says its goal in the prioritization proposal is a "pipeline" that will help the agency wade through the backlog of thousands of chemicals in commerce.

Section 6(b)(1) of the revised TSCA requires EPA to establish a risk-based screening process and criteria that EPA will use to identify chemical substances as either high-priority substances for risk evaluation, or low-priority substances for which risk evaluations are not warranted at the time.

The first action in EPA's proposed four-step process, what the agency calls the "pre-prioritization process," generated significant comments from stakeholders, with environmentalists and California's EPA generally supporting the proposal. EPA in January described this as an initial step in which it would narrow the pool of potential chemicals using the new statutory criteria.

The remaining steps in the proposed four-step prioritization process continue with an initiation phase in which the agency would announce a candidate chemical ahead of a 90-day public comment period. Then, under the third step, EPA would propose to designate a chemical as high- or low-priority, publish the proposed designation, information, analysis, and basis for the decision, and take a second round of public comment for 90 days.

Under the fourth and final step, EPA would either finalize a high-priority designation and initiate a risk evaluation, or finalize a low-priority substance, which would mean a review would not be necessary until or unless the agency received new information on that substance that indicated potential increased risks.

Pre-Prioritization Step

The Environmental Defense Fund (EDF) writes in its March 20 comments that the pre-prioritization step is needed, pointing to requirements in the law that it says require EPA to have some information about the chemical it is prioritizing as high or low priority for assessment, and the strict deadlines for completing the prioritization process, which then leads directly to the risk assessment deadlines.

"Due to the data needs coupled with the deadlines set forth by Congress, we agree with EPA that it must generally have all or most of the data needed to designate a chemical as low-priority or conduct a full risk evaluation -- which must address all conditions of use -- at the outset of the prioritization process," EDF writes. "Given these demands, we fully support EPA's proposed pre-prioritization stage to gather needed data."

EDF urges EPA to use this step to gather information from companies, particularly studies they may have already submitted to other regulatory agencies, such as in Europe, and to order new studies if there are data gaps. The group also encourages EPA to remove consideration of substitutes to chemicals being prioritized -- a consideration EPA had suggested as a way to reduce the incidence of regrettable substitution. But EDF says that at this stage of the prioritization process, consideration of substitutes is too early. The Natural Resources Defense Council, in its separate undated comments, also encourages EPA to delay its consideration of alternate chemicals.

But California EPA (CalEPA), in [March 20 comments](#), expresses its support for EPA's consideration of possible substitutes in the prioritization process, though Deputy Secretary for Science Gina Solomon does not specify where in the process CalEPA would like to see that occur. "Such an approach would provide a benefit by removing, rather than substituting, hazardous chemicals. In addition, it would conserve Agency as well as stakeholder/industry resources by avoiding time and resource intensive re-iterative risk evaluations by Agency and costly (and reiterative) switches to other chemicals by industry. To this end, EPA could consider requesting stakeholder input early in the process to help identify likely substitute chemical candidates."

The Safer Chemicals, Healthy Families Coalition -- which broke with EDF in its support of the Lautenberg Chemical Safety Act for the 21st Century that overhauled TSCA when signed into law last June -- agrees the initial pre-prioritization step is necessary. The group argues that "EPA should add other toxicity and exposure triggers to this list. These should include literature reports of potential mutagenicity, developmental toxicity, reproductive effects, developmental neurotoxicity, immunotoxicity, endocrine effects and sensitization. Similar triggers should be used for potential ecotoxicity."

Further, [the coalition encourages EPA](#) to consider the lists of chemicals of concern identified by other EPA offices, agencies and authorities, such as the Hazardous Air Pollutants list or the Toxics Release Inventory Database.

Chemical Uses

The Coalition, CalEPA and EDF also support EPA's approach to consider the conditions of use of chemicals in the prioritization process, already an issue of concern for industry based on EPA's new approach to its new chemical pre-manufacture review process.

Since the Lautenberg Act was signed into law last June, EPA had completed just 33 of these reviews by the time of the annual industry GlobalChem conference in February, Cal Dooley, president and CEO of the American Chemistry Council said at the event. Before the new law, EPA completed reviews of some 1,000 new chemicals each year.

The new chemicals review process has stalled because the new law requires EPA to reach an affirmative finding about each new chemical that it reviews regarding its potential health risks, and EPA has interpreted the statute's language that it must review all reasonably foreseeable uses of the chemical. During the GlobalChem conference, EPA's acting toxics chief, Wendy Cleland-Hamnett, told attendees that she and her staff are considering all options to deal with the backlog, but that agency staff must be able to meet the statute's requirements.

The environmental groups are praising EPA's approach to the conditions of use interpretation in the proposed rule. The new law requires EPA by June 2017 to develop criteria and a final implementing rule outlining how agency staff will prioritize as high priority those chemicals that "may present an unreasonable risk of injury to health or the environment," and as low priority, not requiring assessment at the time, those that do not meet that standard.

EPA has proposed an approach wherein all of a chemical's potential uses must meet the unreasonable risk standard in order for the chemical to be deemed low priority, while just one use not passing muster will flag a chemical as high priority. The environmental groups generally praise this proposed approach, while industry groups are protesting it.

The coalition argues that "since the prerequisite for high-priority listing is a determination that a chemical 'may present an unreasonable risk,' a chemical will qualify as low priority only if it can be demonstrated to lack the potential for unreasonable risk. . . . Like high-priority designations, low priority listings apply to the chemical as a whole, not specific uses, and thus must be based on a finding of no unreasonable risk across all the conditions of use. Demonstrating the absence of unreasonable risk for all activities that fit the definition of 'conditions of use' is essential because low priority chemicals will not be subject to risk evaluations and will be perceived as 'safe' by users and the general public."

EPA Designations

The groups add that they support EPA's approach to designations, but add that low priority designations should be peer reviewed to "provide an essential safeguard against unwarranted 'false negatives.'"

By contrast, industry groups are arguing that EPA should treat high and low priority designations similarly. The U.S. Chamber of Commerce in its March 20 comments urges EPA to "reconsider its treatment of low priority chemicals, as the bar is set extremely high for designating chemicals as low priority. . . . It is imperative that EPA give high priority and low priority chemicals the same treatment."

The business lobby adds that "It would be in EPA's best interest to adjust that proposal so that EPA is just as likely to designate a chemical as high priority as it is to designate one as low priority. . . . This would allow EPA to make low priority designations based on the likelihood that only certain condition(s) of use of a chemical have a low potential for risk, rather than the lofty standard of 'all.' This would benefit EPA as well, considering it would be able to conserve its resources and focus on fewer and less cumbersome high priority designations."

An industry coalition raises similar points, arguing in its March comments that EPA should release a supplemental proposal for comment, since the agency does not have time to withdraw and re-do its proposal given the June 2017 deadline. Among its many concerns, the group argues that it "does not agree [with EPA] that 'a large number' of chemicals will meet the high-priority definition. . . . The term 'may present an unreasonable risk' is used throughout TSCA and is not intended to cast a broad net." -- *Maria Hegstad* (mhegstad@iwppnews.com)

EPA Seeks \$14 Million TSCA Boost As GOP Senator Vows Priority Funding Inside EPA

EPA is seeking a \$14 million funding boost to help implement the overhauled Toxic Substances Control Act (TSCA) even though President Donald Trump's fiscal year 2018 budget would cut overall agency funding by 31 percent, while a key GOP senator is vowing that adequate funding for implementing the law will be "prioritized."

The agency's Office of Chemical Safety and Pollution Prevention (OSCPP) -- the office tasked with implementing the massive toxics law overhaul -- would get \$14 million "in non-pay resources in support of the new work required under the updated TSCA law," according to a March 21 memo from the agency's acting chief financial officer David Bloom. The memo says the additional funds will help to pay for "the work required for the new TSCA legislation."

The law, known as the Frank R. Lautenberg Chemical Safety for the 21st Century Act, provides EPA with a slew of new regulatory authorities to address new and existing chemicals. It gives the agency power to charge the chemical sector fees to cover risk evaluations of existing chemicals -- those chemicals that were on the market when the original TSCA took effect in 1976, and which generally grandfathered those chemicals from regulation.

A memo attachment describing Trump's budget policy guidance says the White House Office of Management and Budget "requested updated budget projections as TSCA reform implementation gets underway. OCSPP is to expedite the TSCA fee rule to generate the fee funding assumed in the FY 2018 President's Budget."

The memo also indicates that 53.6 full-time employee equivalents (FTE) would be moved from OCSPP's "chemical risk review and reduction" activities and "shifted to the new fee fund account. OCSPP is to expedite promulgation of the new fee and include [the Office of the Chief Financial Officer] on the workgroup."

The memo does not provide FY18 total funding per program. The proposed changes are based on FY16 enacted levels, which for the OCSPP risk review and reduction account were \$19.8 million funding with 238.7 FTEs.

But the revised TSCA law says that paying for the costs of implementation is not solely industry's duty. The law requires that EPA must have appropriations at or above the FY14 enacted level for TSCA implementation to conduct its new responsibilities, and the budget memo indicates an attempt to satisfy that requirement.

The memo, first reported by the *Washington Post*, proposes that OCSPP receive a \$13.8 million budget increase "in non-pay resources in support of the new work required under the updated TSCA law."

Bloom's memo calls on top agency officials to detail "those activities that will be supported, reduced or eliminated," so that the agency can develop the pending congressional justification for the FY18 budget request, and appropriators in Congress will then start crafting their EPA funding bills. "Notably, fee-based funding is encouraged," says the memo, which would include the TSCA fee program to help pay for the law's implementation.

When attention on the FY18 budget process shifts to Congress, at least one key Republican senator is vowing to push for sufficient funding to cover the TSCA activities regardless of any overall cut to EPA's budget.

Trump's budget outline released earlier this year would impose a massive \$2.4 billion cut to EPA's existing \$8.1 billion budget, a level that would bring the agency's funding to \$5.7 billion from the \$8.3 billion 2017 funding level. It proposes cutting "approximately 3,200" employees and more than 50 programs.

However, Sen. Steve Daines (R-MT) -- a member of the Appropriations Committee's interior panel that oversees EPA's funding -- is vowing that TSCA implementation will be adequately funded.

"TSCA is going to be prioritized," he told *Inside EPA* in a brief March 29 interview when asked about the looming budget situation and its impact on EPA's ability to implement the toxics law.

Although the Trump administration is floating almost \$14 million in additional funding for EPA's work on TSCA, it is unclear whether that proposal will be sufficient to cover all of the agency's responsibilities.

EPA in a report provided to Congress last January estimated the resources the agency will need to perform risk evaluations of existing chemicals under TSCA section 6(b), as well as estimates of demand, and an anticipated schedule for performing the reviews. The report responds to a mandate in section 26(m)(1) of the updated TSCA law, which required the report's submission to Congress within six months of enactment.

The report indicated that EPA anticipates its first year costs at \$12.3 million for beginning the evaluations of the 10 chemicals EPA announced last December would be the first reviewed in the new program. In 2018, EPA plans to be evaluating 15 chemicals, with costs for that calendar year rising to \$28.4 million. EPA indicates that in 2019, as directed by the statute, it will be conducting 20 chemical evaluations, at a total cost of \$38.3 million.

EPA expects that the program will cost \$35.8 million annually after 2021, in a "generic future year when the EPA's implementation of all provisions of the statute have reached specified minimum levels."

Even before Trump released the budget outline, chemical industry officials had said they would engage in talks with Congress and the administration to ensure adequate funding for implementation of TSCA.

For example, the trade group Society of Chemical Manufacturers and Affiliates (SOCMA) in a February press release outlined priorities for Trump's first 100 days in office, including the updated toxics law, saying the group would push for "reaffirming the importance of [TSCA] implementation and ensuring [EPA] moves forward in a way that not only protects human health and the environment but promotes innovation."

In a Feb. 8 interview, SOCMA's Dan Newton, senior manager, government relations, said the group's priorities included working with EPA to ensure that the framework TSCA rules EPA is drafting "get done right."

He also acknowledged "it's possible" SOCMA will need to advocate for EPA's toxics budget with the administration or Congress. The trade group is preparing for its annual April "Washington fly-in" where SOCMA members visit Washington, D.C. to meet with legislators and regulators to discuss their concerns and priorities.

Following release of the FY18 budget blueprint last month, the American Chemistry Council (ACC) issued a statement saying it is "committed to working with the Administration and Congress to ensure EPA has funding to carry out essential responsibilities, including the implementation of the Lautenberg Chemical Safety Act, in the most cost effective manner. Ensuring the safe development, use and disposal of chemicals in commerce is a top priority for our industry. We encourage Congress and the Administration to implement a national budget that ensures that the best available science and transparency are at the heart of Agency decision making."

Mike Walls, vice president of regulatory and technical affairs at ACC, in a briefing for reporters last December described implementation of TSCA as the top priority for the trade group in 2017.

While acknowledging the possibility that Senate Democrats might try to block or slow the nomination process for Trump's eventual nomination to head OSCPP, or that Republicans might try to reduce the agency's budget significantly, Walls said he does not believe that either situation would hamper TSCA's implementation.

"[The] Lautenberg [law] is very clear in expectations for the agency. I'm absolutely confident without confirmed nominees for every [slot] we have [staff and] acting management . . . to ensure these deadlines can be met," he said.

Regarding funding, Walls pointed to ACC's support of EPA's new ability in the revised TSCA to assess fees on industry to help fund an enlarged toxics program. He also noted the language in the updated law that requires Congress to set the EPA toxics program's budget at or above the FY14 appropriations level.

ACC is also working with the American Chemical Society and the National Association of Chemical Distributors to launch a new chemistry caucus for the Senate, which could help push for adequate TSCA funding.

The group is a companion to the chemistry caucus the groups helped to launch in the House last year. During a kickoff reception March 29, several new members mentioned approval of the TSCA overhaul, though Sen. Chris Coons (D-DE), a chemist, noted that there is more work for the caucus to ensure the new statute is successful.

"Many of us, I think, were inspired to form a chemistry caucus by the bipartisan, bicameral success in the last Congress of TSCA reform, something many of us thought would never happen, but actually got over the finish line and now we need to help make it live up to its promise," Coons said. -- *Maria Hegstad*

Chemical Secrets Face Greatest EPA Scrutiny Ever Daily Environment Report

By *Pat Rizzuto*

Chemical manufacturers' trade secret claims will face the most systematic scrutiny ever from the EPA as the agency proposes to update its inventory of commercial chemicals.

Of the approximately 85,000 chemicals on the Environmental Protection Agency's chemicals inventory, about 17,000—or 20 percent—are on the confidential portion of that inventory, Steve Owens, an attorney with Squire Patton Boggs' Phoenix, Ariz., office told Bloomberg BNA.

Chemical manufacturers cannot patent their molecules, making the secrecy of their chemicals' identity critical to safeguarding their intellectual property. Congress's 2016 overhaul of the Toxic Substances Control Act requires that companies back up many claims they make that information must be kept from the public—especially competitors—and it requires the EPA to review those claims, something it has rarely done.

"This will be the most comprehensive review of the confidential inventory that's ever been done," said Owens, who previously served as assistant administrator for the Environmental Protection Agency's chemical and pesticide offices under President Barack Obama.

The 2016 amendments to TSCA require the EPA to propose the rule, which it published Jan. 13 (RIN:2070-AK24; 82 Fed. Reg. 4255). The proposed rule is designed to achieve two goals.

First, it would help the agency know what chemicals have been in commerce over the last 10 years.

Second, it would require the agency to review companies' claims that certain information be kept confidential to protect trade secrets.

For example, companies that want to maintain a chemical's identity as confidential would have to assert that claim when they notify the EPA that they make, import or process a chemical that already has a confidential identity.

Being on the confidential inventory means the EPA knows the chemicals' identities, but is not allowed to release that information to the general public.

Exceeding Law's Intent?

Environmental advocates argue that the EPA's proposal could lead to more chemicals being declared confidential. Richard Denison, lead senior scientist for the Environmental Defense Fund, told Bloomberg BNA the EPA's proposed rule goes beyond what the 2016 TSCA amendments intended.

The agency has proposed to let companies make new claims, not just reassert their own prior claims that chemicals on the confidential inventory need to remain there, he said. The defense fund was the only environmental organization to comment on the inventory update rule.

The EPA's proposed rule would allow any chemical manufacturer or processor, which notifies the agency that it makes, imports or processes a chemical with an existing CBI claim, to ask the agency to maintain the confidential identity of that chemical.

The company can make that claim regardless of whether it "asserted the original claim that caused the specific chemical identity to be treated as confidential," the EPA said in its proposal.

"A number of manufacturers and processors may legitimately benefit from the confidential status of a specific chemical identity, and the initial claimant may no longer exist," the agency said.

Industries Back EPA Proposal

The Society of Chemical Manufacturers & Affiliates, which represents specialty chemical manufacturers, and the American Petroleum Institute were among the industry organizations to support the EPA's proposal in comments they filed about the rule. Comments were due March 14.

Any company claiming the need to protect information including chemical identity is required to substantiate that claim, Judah Prero, an attorney with Sidley Austin LLP who formerly worked at the American Chemistry Council, told Bloomberg BNA.

For example, the company must have taken reasonable measures to protect the confidentiality of a chemical's identity; that identity must not be disclosed or otherwise made available to the public under any other federal law; and there must be a reasonable basis to conclude that disclosure would likely cause substantial harm, he said.

Jessie Kneeland, an environmental chemist with the environmental and risk sciences consulting firm Gradient, told Bloomberg BNA any company that makes or imports a chemical on the EPA's confidential inventory should make sure it asserts a claim to maintain the confidential identity of that chemical.

Denison, however, said the amended law allows only the original company that asserted the need to keep a chemical's identity confidential to seek to maintain its confidential status.

"CBI claims are company-specific and can't be 'borrowed' by other companies," he wrote in a recent [blog](#).

"One company may be able to justify a trade secret claim for chemical identity, while another company can't," Denison told Bloomberg BNA.

Companies that wish to assert a new claim can do so, but must follow procedures detailed in a separate section of amended TSCA (Section 14) —not Section 8, which requires the EPA to update the inventory, Denison said.

Two Stages of CBI Review

Owens said the EPA's proposed approach makes sense at this stage of the process since the proposal rule would not immediately require companies to substantiate claims to maintain the confidential identity of a chemical.

The EPA's review of confidential business information claims will occur in two stages because there are two types of claims the proposed rule addresses.

Chemical manufacturers, importers or processors that seek to maintain a chemical's confidential status on the TSCA inventory would click a box on a notification form the EPA's proposed rule provides and let the EPA know the chemical's identity should be kept confidential.

Specifics Coming

After the EPA determines which chemicals are active in commerce, it will propose another rule detailing the process it would use to review CBI claims for chemical identity.

The agency must complete its review of these confidentiality claims within five years of issuing that active substances list.

Owens said there are companies other than the original claimant that may rely on the fact that a chemical is currently on the confidential portion of the TSCA Inventory. It's reasonable to allow any company that manufactures, imports or processes a confidential chemical to assert the CBI claim for purposes of the inventory reset to avoid business disruptions and other issues that could arise, he said.

Allowing additional companies to maintain an existing CBI claim—pending later substantiation and review—would eliminate uncertainty for any company that may rely on the CBI claim and that may be unsure whether some other party is going to assert the claim, Owens said.

"EPA can make a determination later about whether the CBI claim should be allowed to continue, when it requires substantiation of the claim," he told Bloomberg BNA.

There are other benefits to allowing parties other than the original claimant to assert CBI for chemical identity during the inventory update, Owens said.

In the short run, the agency would not have to spend time, resources and effort double-checking confidential business information claims to determine whether the company seeking to maintain the existing claim is in fact the original claimant, he said.

Other Confidential Information

The other types of information that companies may claim as confidential during the notification process include a company's identity and whether that company makes a chemical, imports it or processes it. The EPA's proposed rule would require those types of claims to be substantiated as they are made.

The proposed rule said the EPA would review a subset of these claims.

Denison said the EPA's proposed rule also is too lenient when it comes to reviewing CBI claims for information other than chemical identity.

The EPA's proposed rule would presume that any non-confidential chemical for which it received production information in 2012 or 2016 as chemical manufacturers complied with the Chemical Data Reporting rule would be in commerce.

Companies would not have to notify the agency again that they make those particular non-confidential chemicals. The consequence of that, Denison said, is that confidentiality claims for information other than chemical identity that had companies asserted when they filed their Chemical Data Reporting submissions would remain.

Those CBI claims would not necessarily be reviewed by the EPA to ensure they are warranted, he said.

Huge Workload Ahead

The inventory update rule is the first of three fundamental regulations the amended chemicals law required the EPA to issue as final by June.

Looking ahead Owens and Prero said the agency faces a tremendous workload.

Speaking only about the inventory update rule, Prero said, EPA has never had a time when it would have gotten the amount of information at once as it would receive to update the inventory.

"This will be a trial by fire as the EPA gets information and has to start reviewing it," he said.

Owens said reviewing CBI claims is "a very resource intensive exercise."

The EPA will have a hard time completing this task and other TSCA implementation tasks under the budget cuts the Trump administration has proposed, he said.

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CHEMICALS: Carper pushes Pruitt on pesticide decision E&E Daily

The top Democrat on the Senate Environment and Public Works Committee is "troubled" by U.S. EPA's recent decision against banning a pesticide the agency once said was a health risk to children.

"Absent such justification, this decision to lift the proposed ban could undermine the trust the public has in the agency to keep its food, water and air safe," Sen. Tom Carper (D-Del.) wrote in a letter Friday to EPA Administrator Scott Pruitt.

Pruitt last week declined to finalize the ban, which was proposed under the Obama administration in 2015, saying that "thousands of American farms" rely on the pesticide, chlorpyrifos (Greenwire, March 30).

Carper called the decision "sudden" and criticized the agency for not providing any new analysis to refute its existing scientific conclusion.

EPA's most recent health assessment of the pesticide comes from November 2015, when it found that current uses of chlorpyrifos pose dietary and drinking water risks to humans and especially children.

The Obama EPA proposed to ban the substance after the Natural Resources Defense Council and the Pesticide Action Network North America filed a petition.

Carper requested all of the agency's documents related to the petition since Nov. 9, 2016, so that he can "review the basis for the decision."

PESTICIDES: Opponents look to courts after EPA about-face on chemical Greenwire

Efforts to ban certain pesticides have hit a wall with the Trump administration, so groups opposed to their use are weighing other battle plans.

The biggest blow for pesticide skeptics was U.S. EPA's decision last week not to ban chlorpyrifos, despite earlier moves by the agency to stop its use after reports that residue left on fruit could be harmful to children.

"I'm very discouraged. I wouldn't say surprised," said Miriam Rotkin-Ellman, a senior scientist with the Natural Resources Defense Council, which petitioned EPA in 2007 to have chlorpyrifos banned. The chemical is commonly used on apples and often on broccoli and walnuts. The agency banned it from indoor use in 2000 but allowed agricultural uses to continue ([*see related story*](#)).

Pesticide critics said they'll look to federal courts and, in some cases, product labeling to curtail the chemical's use. While pesticides already in use may be hard to fight, "it's possible that through the courts, there could be delays in registering new ones," said Paul Towers, organizing director and policy advocate for the Pesticide Action Network North America, which joined NRDC in the chlorpyrifos petition.

Agricultural groups and companies that make farm chemicals say fears of chlorpyrifos are overblown and that EPA's earlier move to stop its use were based on results from epidemiological studies that couldn't be replicated by other researchers.

CropLife America, a trade group for farm chemical makers, called the decision on chlorpyrifos "a hopeful indication that EPA is recommitting to adherence to established requirements and guidelines relating to transparency, public process and scientific integrity."

CropLife's senior director of regulatory policy, Ray McAllister, said today that companies are committed to the safe use of their products, both through restrictions on who can apply them and through label revisions, which he said are "almost a continuous process."

Critics of chlorpyrifos aren't necessarily dropping their fight. Rotkin-Ellman said the agency's decision may not satisfy a court order by the 9th U.S. Circuit Court of Appeals last year telling EPA to reach a final decision on the chemical's use by March 31, because the agency didn't cite any new science in its decision. EPA said it will defer action on chlorpyrifos until 2022 ([*Greenwire*](#), March 30).

Both sides in the debate are turning attention to other pesticides in the regulatory pipeline. Those include other treatments in the same class — called organophosphates — as chlorpyrifos, such as tetrachlorvinphos, dicofol and malathion, which have agricultural and other uses and face challenges based on food and water risks.

"I'm worried that this is setting a precedent for all of them," Rotkin-Ellman said.

EPA also faces a vigorous debate about the weedkiller glyphosate, which is undergoing a periodic registration review and has been caught up in a debate over potential links to cancer that EPA disputes. And a variety of chemicals called neonicotinoids — including imidacloprid, clothianidin and four others — are undergoing registration reviews due for completion next year.

Advocates for pollinators say they are particularly concerned about the neonicotinoids' potential harm to bees. EPA said in January that most approved uses of four neonicotinoids don't pose a risk to bee colonies but that on some crops, including cucumbers, berries and cotton, residue from spraying could harm bees.

The fight over banning pesticides sometimes misses the middle ground of how to use them with minimal harm, said Michele Colopy, program director for the Pollinator Stewardship Council, in Akron, Ohio.

In some cases, Colopy said, labels are too vague, such as using the term "when used properly."

Even when farmers or other applicators follow labels, Colopy said, bees sometimes die — for instance, when almond trees are sprayed next to a peach orchard and the chemicals drift next door to where bees are visiting.

More specific instructions, dictated by EPA, could cut down on misuse, she said.

"We hope that labels will help provide that kind of information," Colopy said. "We are not about banning them. We're about using them responsibly."

HHRA

EPA Budget Memo Details Plan To Eliminate IRIS, Risk Programs In FY18 Inside

EPA

EPA is proposing to eliminate its influential Integrated Risk Information System (IRIS) program, as well as a host of other risk assessment related programs in the agency's toxics and research offices in fiscal year 2018, according to a memo detailing how the agency plans to implement the administration's budget request.

The administration also plans to make significant cuts to the agency's pesticides program, which the memo suggests can be offset by current and future user fees that Congress is expected to reauthorize this year.

EPA is poised to begin a "comprehensive look" at all of its programs and responsibilities as it works to implement the Trump administration's 31 percent budget cut for fiscal year 2018, according to a March 21 memo from David Bloom, the agency's acting chief financial officer, detailing how officials plan to implement the president's budget request across EPA.

"This resource level will require taking a comprehensive look at our priorities and thinking differently about the best ways to accomplish our core statutory responsibilities," he says. *The memo is available on InsideEPA.com. (Doc. ID: 200527)*

The memo, first reported by the *Washington Post*, calls on top agency officials to detail "those activities that will be supported, reduced or eliminated," so that the agency can develop the congressional justification for its budget.

The administration's FY18 budget request seeks to cut EPA by more than \$2 billion -- or 31 percent -- compared to FY16 levels. While some details of the request have been known, such as its plan to cut the Office of Research & Development by 43 percent, many of the program-level cuts have not been spelled out.

But Bloom's memo provides a comprehensive look at what the budget request will mean for scores of EPA programs.

For example, the memo indicates that the administration is proposing to completely eliminate the IRIS program -- an influential but often controversial program because of its often strict assessments of chemicals' risks, and EPA's usage of IRIS dose-response analyses for setting standards and other decisionmaking.

The memo indicates that the administration proposes dropping the research office's human health risk assessment portfolio by \$5.6 million and 105 full time equivalent employees (FTE) in the FY18 budget. "This change reflects the elimination of the IRIS program and the re-focusing on core statutory obligations," the memo states.

The proposal is not surprising, as IRIS has been long criticized by regulated entities for the stringency of its assessments and has been on the Government Accountability Office list of programs at "high risk" of waste, fraud or abuse for its inability to produce assessments in a timely way.

The budget memo also indicates a significant reduction in the agency's Science Advisory Board (SAB) budget that is presumably related to the proposed elimination of IRIS, as one of SAB's subpanels is devoted to reviewing IRIS assessments.

The FY18 budget proposes cutting \$542,000 from SAB's funding and eliminating 2.9 FTEs "to reflect an anticipated lower number of peer reviews," the memo states. The memo indicates that SAB's FY16 enacted funding level was \$646,000 with 21.9 FTE.

EPA's budget memo indicates a series of cuts to the Office of Pesticide Programs (OPP), though the memo indicates that some of those cuts are likely to be offset by industry-financed fees authorized by the Pesticide Registration Improvement Act (PRIA).

The program has long provided EPA with authority to collect fees from pesticide manufacturers to ensure efficient and regular registration of new products, as the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requires before new pesticide products can be used in the U.S.

For example, the memo proposes a \$5.7 million and 31.7 FTE decrease from the FY16 enacted funding of \$6.1 million in OPP's funding and 324.8 FTE for protecting human health from pesticide risk. Similarly, the memo proposes cutting \$4 million and 18 FTE from the \$4.6 million in FY16 funding and 207.9 FTE for protecting the environment from pesticides.

Each of the cuts to OPP is explained with the following or similar language: "The President's Budget will include language to allow the pesticides program to use fees on a broader range of activities in the program, preventing a reduction or slowing in pesticide reviews. The program has nearly \$30M of unspent fee carryover that can help support core work."

EPA's current authority for collecting fees is slated to expire in September 2017. The House recently approved the latest re-authorization bill, H.R. 1029, which would extend EPA's authority to collect the user fees through 2023. The bill awaits action in the Senate.

The budget memo indicates that the Trump administration is looking to these and future fees. "Sizable unobligated balances in EPA's FIFRA fee accounts are to be used to offset FY 2018 funding levels," the memo states. "Additionally, any potential additional fee collections from the upcoming reauthorization of PRIA could help offset reductions to the program."

The approach would continue an existing trend of Congress and administrations reducing OPP appropriations. Since 2004, the first year PRIA was in effect, appropriations for FTEs has dropped 25 percent, from \$625.1 million in 2004 to \$477.8 million in 2014 says Phil Klein, executive vice president of legislative and public affairs at Consumer Specialty Products Association (CSPA) in an April 3 interview with *Risk Policy Report*. The cuts have had a "significant and adverse impact" on OPP's ability to meet its registration deadlines for new pesticide products, Klein says.

Nevertheless, the PRIA coalition -- companies and NGOs that support the program -- is urging Congress to pass the new bill re-authorizing PRIA. "The legislation that passed the House unanimously . . . H.R. 1029, provides stable funding for OPP for the next seven years, including \$31 million in maintenance fees, \$1 million in worker protection fees and \$500,000 for efficacy guidelines. These are vital as we combat Zika, West Nile and Lyme disease in the U.S.," Klein says.

"We're projecting \$16 to 18 million in registration fees. Over the seven years on top of that, there are two five percent bumps," Klein says, adding that the maintenance, worker protection and efficacy fees are separate and in addition to the registration fees.

In an industry where missing a growing season or a pest season can mean losing a year's income, those deadlines are very important for pesticide manufacturers. "You can't decimate EPA if you want [the pesticide industry] to grow and innovate," Klein says.

EPA's current authority, known as PRIA3, includes a trigger which requires that OPP's appropriated funding be set at at least \$128 million in order to allow the agency to collect the registration fees authorized in PRIA. That same trigger remains in H.R. 1029, Klein says. But Klein notes that over the past few years, the PRIA Coalition have agreed when Congress waived the \$128 million funding requirement -- even though it has not been met -- because funding cuts have threatened OPP's ability to do its work.

Industry has supported the waiver of the trigger because of the importance of EPA meeting its deadlines to register new products, Klein explains. "You're counting on that deadline to market your product."

Klein declined to comment on the changes outlined in the budget memo. But he added that the PRIA coalition will be active in advocating for OPP's funding with Congress. "Stable funding provides industry innovation predictability, provides EPA the FTEs it needs to do the job that industry and NGOs want, and protecting the public health," he says. "It's a win win win. That message will be heard loud and clear on capitol hill."

The memo indicates that the FY18 budget also proposes eliminating a number of programs in the toxics office, such as EPA's endocrine disruptor program, its lead risk reduction program and related grants, the pollution prevention program and a science policy and biotechnology program. The memo gives little explanation, but generally indicates that EPA should focus on statutory programs and highest priorities.

Regarding the endocrine program, the memo says that "funding for this mature program is eliminated. The principal goals for the program have been accomplished; for the remainder, program is to identify critical work and provide information on implications for inaction, and/or how and under what program it will be accomplished."

Elsewhere, the memo states that Bloom's office will schedule a meeting with the White House no later than June 15 "to discuss how EPA will integrate endocrine disruptor screening into its existing programs for risk assessment and risk regulation."

Reiterating the long-standing stance of Administrator Scott Pruitt, acting CFO Bloom says the agency's work will center on "our core legal requirements, federal-only and national efforts, providing support to states in implementing environmental laws, and easing regulatory burden." Many voluntary programs will also be eliminated, he says. "Non-core international efforts" are reduced, while "fee-based funding is encouraged."

An attachment to the memo lays out upcoming milestones for developing the final budget documents, setting a schedule that will see pre-dissemination review for acting assistant administrators to certify the documents by April 25. — *Maria Hegstad*

SHC

PESTICIDES: New EPA rule puts some kids at autism risk *Greenwire*

The Trump administration's refusal to ban a pesticide linked to health issues could affect the mostly Hispanic children of undocumented immigrants who live near the farms where they work to pick the pesticide-covered produce.

Last week, U.S. EPA Administrator Scott Pruitt denied a potential ban on chlorpyrifos that the Obama administration proposed. Environmental groups have vowed to halt the pesticide's use by other means ([see related story](#)).

Studies have shown that exposure to pesticides can come from consuming foods grown with it, and children are especially susceptible to the health risks. The risk is worse if for people who live and work around the chemical. A 2014 study from the University of California, Davis, found that children of mothers who lived within 1.5 kilometers of chlorpyrifos-treated farms during their second trimester were over three times more likely to develop autism. A November 2016 report from EPA showed that just eating the produce exposes children ages 1 to 2 to a dose that is 140 times the agency's safe threshold.

Children raised around the farms using the chemicals often are exposed through their diets, as well. This is a "double whammy," according to Miriam Rotkin-Ellman, a scientist with the Natural Resources Defense Council (Deena Shanker, [Bloomberg](#), April 3). — **CS**

SSWR

Flint tells EPA it's not ready to finalize future water sources MLive.com

Supreme Court denies Trump's effort to halt EPA water rule Washington Examiner

NRDC Fights EPA Bid To Amend Water Quality Test In California Drought Suit Inside EPA

Environmentalists are fighting a request by EPA to stay potentially precedential litigation over California drought standards that could expand when the agency is required to approve revised state water quality standards (WQS), urging a federal court to reject the request to prevent officials from overhauling the test they have long used to determine whether standards are "revised" and subject to review.

"We'll be opposing EPA's motion, which appears to be an attempt to revisit the applicable legal standard articulated by the court regarding what constitutes a revision to water quality standards" that are subject to mandatory review, says an environmental attorney.

In a March 24 brief, EPA requests 75 days, until June 7, to complete its review of California's emergency drought orders, known as temporary urgency change petitions (TUCPs). "EPA will then report its findings to this Court and all parties," the motion says.

The environmentalists, including Natural Resources Defense Council (NRDC), the Bay Institute and Defenders of Wildlife, are slated to formally respond to EPA's stay motion April 24 and the court is scheduled to hold arguments on the motion May 25. *Relevant documents are available on InsideEPA.com. (Doc. ID: 200445)*

But in preliminary documents environmentalists filed late last month, they signaled they will oppose EPA's request for a stay and remand if it seeks to reconsider the test it uses for determining whether the standard is "revised," though they are willing to allow for a narrower remand.

Instead, they are urging the court to rule on whether the TUCPs at issue are "revised" and subject to EPA review rather than allow the agency to revise its test for determining whether the standards qualify for review.

Of particular concern to environmentalists is that EPA may seek to revise the so-called "effects test," a portion of the agency's policy which holds that a state standard is "new or revised" and subject to review if it "has the effect of changing a water quality standard."

But the issue is complicated, as EPA is arguing in its March 24 brief that it is entitled to deference under longstanding principles of administrative law, as well as judicial economy, although the agency's lawyers conceded during oral arguments that case law holds that the agency's currently articulated effects test is binding.

If successful, the suit, *NRDC, et al. v. Scott Pruitt, et al.*, could expand the universe of state water policies subject to the Clean Water Act (CWA) requirement that EPA review and approve new or revised water quality standards before they go into effect.

Pending before the U.S. District Court for the Northern District of California, the suit alleges that EPA violated the CWA by allowing California's Water Resources Control Board (WRCB) to advance TUCPs for the Sacramento River Basin and San Joaquin River Basin, known as the Central Valley Plan, and its separate rules for the San Francisco Bay-Delta Estuary, including updates issued in 2014, 2015 and 2016, without reviewing the plans.

The plaintiffs are seeking a court order that would force the state to await EPA approval before acting on any new updates for the Central Valley Plan and the Bay-Delta plan.

The WRCB orders at issue allowed more water to be diverted for residential, industrial and agricultural uses to counter the effects of pervasive drought in the Golden State. Those measures include easing limits on the waterbodies' salinity and conductivity while lowering the minimum flow rate regulators would enforce.

But environmentalists say that by limiting flow through the waterbodies, the WRCB orders have contributed to more toxic algae blooms in California waterways and a host of other adverse environmental effects, including harms to endangered species and potential losses in salmon stocks.

In a February blog post, NRDC attorney Kate Poole says that WRCB made 14 separate decisions over the last three years that allowed "massive state and federal water diversion projects in the Bay-Delta to violate more than 24 water quality standards." Those decisions "redirected more than 1.3 million acre-feet of water away from protecting water quality and the environment, and allowed it instead to be used primarily for corporate agriculture."

Under section 303 of the CWA, EPA is generally required to review new or revised state water quality standards. But neither the law, nor EPA's implementing regulations define when a state standard is "revised" and subject to review. Instead, the agency has defined the term in its Water Quality Standards Handbook, which was last updated in 2012.

The most recent handbook spells out a four-part test for determining whether standards are "new or revised," including whether it is legally binding, whether it addresses designated uses, water quality criteria and other measures and whether it establishes a new or revised standard.

To make the latter determination, EPA's handbook spells out the "effects test," which holds that a standard is "new or revised" if it has the effect of changing an existing WQS. "In contrast, a provision that simply implements a WQS without revising it would not constitute a new or revised WQS," the handbook says.

EPA initially sought to dismiss the suit, arguing in part that the state orders are not "revised" water quality standards subject to agency review.

But last month, Judge Jon S. Tigar rejected the agency's request, agreeing with the environmentalists' arguments that the orders have the effect of water quality standards and are therefore subject to EPA review.

Tigar ruled in part that EPA failed to establish that multiple orders waiving water quality standards issued by WRCB during the state's drought were exempt from mandatory CWA review as revisions to previous standards approved by the federal agency.

And he rejected EPA arguments that the handbook is not controlling, citing case law, including *Miccosukee Tribe of Indians of Florida v. EPA*, a 1997 ruling from the U.S. Court of Appeals for the 11th Circuit, which holds that EPA's handbook is binding.

He noted that EPA's handbook cites the *Miccosukee* ruling as the basis for its effects test, saying that by seeking to dismiss the suit, the agency was taking a litigation position at odds with its own acknowledgment of the case law.

In its March 24 motion, EPA argues that the court should now grant its stay request in part because it is consistent with the "prudential doctrine of primary jurisdiction," which allows courts to determine when a claim "entails technical or policy questions better addressed by an agency with regulatory authority than by the courts."

In addition, a stay would "promote the efficient disposition of this matter," the motion says. "If EPA determines that the orders are a change to the State's water quality standards, there would be no need for the parties to brief and argue that issue, or the claim that EPA has failed to perform a non-discretionary duty under the Clean Water Act. And if EPA determines the orders are not a change to the standards, Plaintiffs will be able to immediately challenge that determination as a final agency action subject to review under the Administrative Procedure Act."

EPA has "already begun the process of carefully re-examining the State's existing water quality standards and the TUCP orders in order to make that determination," the motion adds.

EPA adds that the case has broader ramifications across the country. "Since EPA must simultaneously monitor the

evolution of water quality standards in all states, the Agency is also uniquely situated to understand how a decision on whether California's TUCP orders were revised water quality standards may have precedential impacts on analogous decisions in other states," the motion says.

A determination about the TUCP orders "has a potentially broad precedential impact because the TUCP orders are representative of a more general category of practices not tied to a specific implementation function described in the CWA."

Because EPA did not subject the 2014-2016 TUCP orders to review under CWA and "had never done so with respect to TUCP orders issued before 2014," a decision on the status of the TUCP orders "thus has the potential to set significant national precedent regarding the scope of EPA's oversight of state programs under the CWA. Allowing EPA to exercise primary jurisdiction would thus provide "[u]niformity and consistency in the regulation of business."

But environmentalists say it would be inappropriate for EPA to "revisit the legal standard" the court has already upheld when it rejected the agency's motion to dismiss.

The only remaining question for the court is "whether the TUCPs do, in fact, constitute water quality standard revisions under the effects test," the environmentalists argue. "Plaintiffs believe this question can be easily resolved on summary judgment and on the basis of undisputed facts."

If the environmentalists are "correct that the TUCPs constitute revised water quality standards, EPA would have between 60 and 90 days to approve or disapprove the revised standards," the response brief says.

The advocates also complain that EPA's requested stay "would appear to preclude Plaintiffs from seeking injunctive relief regarding any TUCPs that may be issued during the stay."

However, they note in the response brief they are prepared to agree to a 60-day referral "in order for EPA to make the limited determination of whether the TUCPs identified in Plaintiffs' complaint constitute water quality standards revisions under the 'effects test' established by the Court's order denying EPA's motion to dismiss and EPA's Water Quality Standards Handbook as cited therein."

They are "amenable to a partial stay during this period, with an exception for motions for preliminary injunctive relief, if necessary."

CLEAN WATER RULE: Dems seek 'guarantee' Trump order won't affect water quality **E&E Daily**

Nine Senate Democrats are demanding that U.S. EPA Administrator Scott Pruitt explain how he intends to comply with President Trump's executive order on the controversial Clean Water Rule.

The senators worry that EPA cannot comply with the executive order Trump signed last month, which calls to review and possibly rescind the regulation, without damaging drinking water quality around the country.

"We are concerned of the threat that Executive Order 13778 poses to critical wetlands and to streams, including streams that feed into the drinking water supplies of 117 million Americans," they wrote in a [letter](#) to Pruitt. "We urge you to continue EPA's mission of making the protection of human and environmental health your highest priority."

The letter was from Sens. Brian Schatz of Hawaii, Ben Cardin of Maryland, Chris Van Hollen of Maryland, Sheldon Whitehouse of Rhode Island, Kirsten Gillibrand of New York, Richard Blumenthal of Connecticut, Jack Reed of Rhode Island, Maggie Hassan of New Hampshire, Jeff Merkley of Oregon, Ed Markey of Massachusetts and Cory Booker of New Jersey.

They expressed particular concern about a clause in the executive order directing EPA and Army Corps of Engineers to consider whether former Supreme Court Justice Antonin Scalia's plurality opinion in the famously messy 2006 *Rapanos v. United States* 4-1-4 split decision should be used to decide which wetlands and waterways get protection.

In that case, Michigan landowner John Rapanos wanted to develop a property that was designated a wetland.

Because he hadn't applied for a permit, EPA sought to bring civil and criminal enforcement actions. Scalia, who died last year, argued that the Clean Water Act only applied to "navigable waters" connected by a surface flow at least part of the year. He was joined by Chief Justice John Roberts and Justices Clarence Thomas and Samuel Alito.

But Justice Anthony Kennedy issued a concurring opinion, stating that waters must have a "significant nexus" to navigable rivers and seas, including through biological or chemical connections.

Until now, EPA has followed Kennedy's "significant nexus" test in regulating clean water.

The Democrats wrote that the majority of the Supreme Court "rejected" Scalia's opinion "and it does not reflect the body of precedent implementing the Clean Water Act."

They asked that Pruitt explain how he will "guarantee that drinking water quality will not be worse" for those whose water systems draw from seasonal, rain-dependent or headwater streams that might be excluded under Scalia's interpretation of the law.

They also asked what the financial burden would be on municipalities supplying water from those types of water bodies that might no longer be protected under a potential revised rule and how public health would be affected by a potential rule change.

"Does EPA have studies establishing that contaminating or destroying upstream water bodies will not impact the condition of downstream waters?" the senators wrote.

They also touched on a key complaint home developers, energy companies and farmers had made about both the current rule and the previous guidance written by the Bush administration: that it was too confusing, saying that creating a new rule could only exacerbate that problem.

"We are concerned that revising or revoking this rule will only increase the uncertainty amongst farmers, developers and other stakeholders that want clarity about what water bodies the law protects from pollution," the letter says.

Wastewater authorities outline legal attacks on EPA stormwater policy Inside EPA

April 4, 2017 -- 9:00 AM

A group of municipal wastewater authorities is signaling it will use a pending suit over EPA's general permit for small stormwater systems in New Hampshire to challenge the agency's overall regulatory scheme for stormwater as well as novel elements of the permit, mirroring the group's claims in a suit over a similar EPA permit for Massachusetts.

The Center for Regulatory Reasonableness (CRR) filed a non-binding [statement of issues](#) March 31 outlining the claims it will raise in *CRR v. EPA*, one of a series of challenges filed against the agency's general Clean Water Act (CWA) permit for small municipal separate storm sewers (MS4s) in New Hampshire.

In the statement, CRR outlines not just attacks on terms new to the New Hampshire permit but broad issues relating to EPA's powers to regulate stormwater and the CWA provisions that set out that authority, including the prospect that Congress' mandate for MS4s to reduce pollution releases to "the maximum extent practicable" is unconstitutional.

"Is the statutory 'Maximum Extent Practicable' standard, set forth in CWA § 402(p), unconstitutional as beyond the authority granted under the commerce clause, void for vagueness or as an illegal delegation of authority since there is no objective basis for limiting the scope of compliance activities required by this provision?" the statement says.

That question and the others in the March 31 statement echo CRR's arguments in its [separate suit](#) over the agency's similar general MS4 permit for Massachusetts. EPA is the CWA permit authority for both states, as well as Idaho and New Mexico.

Both the New Hampshire suit and consolidated litigation over the Massachusetts permit, which includes narrower challenges by environmental, industry and municipal groups are pending in the U.S. Court of Appeals for the District of Columbia Circuit.

However, the environmentalist Conservation Law Foundation (CLF) has filed a separate suit over the New

Hampshire permit in the 1st Circuit, and is opposing the Department of Justice's bid to transfer that case to the D.C. Circuit as well. If the 1st Circuit backs CLF and decides to hear that suit, it could set up dueling decisions on the permit's legality.

Science and Science Communication

NSF Director Criticizes Trump's Science Budget Inside Higher Ed

Obama vs. Trump: Early report card on how health and science are changing STAT

Our biggest mistake in the fight against fake news Washington Post

Campaign to spread climate doubt picks up steam Climatewire

"Alt-science" is finding a home in Washington.

In the age of "alternative facts" and the declaration of news as "fake" if it challenges previously held political beliefs, fringe and industry science that bucks years of federal research is gaining newfound prominence. Now, conclusions not published in any of the world's premier science journals could soon be influencing federal policy, backed by Trump administration officials, congressional Republicans, conservative think tanks and a billionaire investor.

Within the field of climate science, there is virtually no debate about the basic cause of climate change. The vast majority of researchers long ago determined that human activity — chiefly the burning of fossil fuels — is causing the planet to warm.

There are, of course, some researchers with a long history of peer-reviewed studies who question man's role in global warming and have concluded that more discussion is needed to determine its full extent. Still, the recipe for curtailing climate change, as determined by most of those who study climate, starts primarily with curbing the burning of fossil fuels.

Today, the House Science, Space and Technology Committee will hold a hearing that will frame climate change as a debate, by including the field's most prominent skeptics as witnesses. It also will explore the hostility faced by those who come forward with views outside the mainstream. In addition, a bill that would allow for greater industry participation in U.S. EPA's Science Advisory Board, which can strongly influence regulations on industry, is expected to pass the House this week.

David Titley, director of the Center for Solutions to Weather and Climate Risk at Pennsylvania State University and a former chief operating officer at the National Oceanic and Atmospheric Administration, argues that the framing is purposeful. As long as climate science is framed as a debate, he said, exaggerating the amount of uncertainty can be used against any sort of regulation that restrains fossil fuel use.

"You don't need to disprove climate scientists; you just need to simply show, 'Hey, there's a debate; nobody really knows, and why should we do anything?'" he said. "It's the perfect outcome if you don't want a debate about policy."

Science has long been bent in Washington to fit inside political opinions. But the current onslaught that is hitting climate scientists is unprecedented in recent years, longtime observers said.

Michael Mann, a climate scientist at Penn State who will participate in the House hearing, said the elevation of untested anti-climate change theories is why actual scientists will march on Washington next month. He said there needs to be more outrage about the climate denial research now gaining increased influence in Washington.

"It is hard to believe that here, in the 21st century, powerful political forces are working so hard to return us to the Dark Ages, to reject the Enlightenment and everything we have learned," he said. "It is shocking and frightening. What we are witnessing is an attack on the very foundation that modern civilization is based upon."

Transition member: NASA, NOAA research is not science

When the Heartland Institute hosted its 12th annual conference on climate change in Washington last week, it featured sessions on how fossil fuels improve human health, encourage plant growth and are capable of establishing world peace. A number of speakers claimed that their research was ignored by the world's reputable science journals, not for its shoddiness, but because of a massive global conspiracy of environmentalists and liberals.

In the audience were a few members of Trump administration's transition team for EPA and NOAA as well as Robert and Rebekah Mercer. The Mercer family has poured millions of dollars into Trump super political action committees as well as in groups that promote climate denial and attack legitimate research as fraudulent. They also own part of the Breitbart News Network, the alt-right news organization that routinely portrays climate change as a liberal hoax.

Energy companies, including Exxon Mobil Corp. and Peabody Energy Inc., have spent millions of dollars to support Heartland or the sponsors of the conference, according to bankruptcy filings and other public disclosures.

Steve Milloy, a member of the Trump administration's transition team at EPA and a lawyer who runs a blog that criticizes climate scientists, said he expects the type of science espoused at the Heartland conference to play more of a role in setting policy in order to reframe climate research as a debate. He said the research at NASA and NOAA is not actually science.

"We need to establish rules for doing science, because government scientists apparently don't know what science is anymore; we need to take away the money, get rid of the authority," he said. "We need to stop playing along with these people."

Kenneth Haapala, a member of the Trump administration's landing team at NOAA, said he expects climate skepticism to inform Trump administration policy. Haapala, who has been called a "swamp alligator" by Democratic lawmakers because he rejects mainstream climate science, runs the Science and Environmental Policy Project, which produces reports that attempt to run counter to mainstream climate science.

"I think we're going to see more healthy skepticism coming from the official position," he said.

'It's where the science meets policy'

The Trump administration has already outlined cuts to climate research at EPA, NOAA, NASA and the Department of Energy.

House Science Chairman Lamar Smith (R-Texas) has routinely accused federal agencies of fraud if he does not like their scientific conclusions. Smith told the crowd, to a raucous cheer, that he would be open to crafting legislation that would punish scientific journals that publish studies that don't meet his standards of peer review, which he did not define.

"The days of trust-me science are over," Smith said.

Some in the crowd at Heartland were hobbyists who conduct their own scientific research in retirement. Others have the ability to directly influence Trump administration climate policy. Rebekah Mercer silently glared at a reporter when asked why her foundation had invested \$6 million in Heartland and the Heritage Foundation, as *The Washington Post* recently reported.

David Kreutzer, who now serves as EPA deputy associate administrator for policy, economics and innovation, also sat for some of the sessions.

The rhetoric of cutting science that is used as a basis for regulation means that there can be no meaningful discussion about how to prepare humanity for climate change, said Maria Zuber, chairwoman of the National Science Board. The proposed cuts to climate science appear to center on business interests and ignore the real risks of global warming, she said. Climate skepticism is connected to concerns about regulation of business, she added.

"My feeling on the matter is that the problem is not climate science; the problem is either real or perceived issues with overregulation that is bad for business and the loss of jobs, so until we address those two issues, we're not going to be able to have a serious conversation about the appropriate investment to mitigate the risk," Zuber said.

James Taylor, one of the conference speakers and a senior fellow for environment and energy policy at Heartland, said it's for the White House to stop ignoring climate skeptics. He said there is plenty of evidence in peer-reviewed scientific literature to suggest that the world is not in a climate crisis. And while he said he believes humans have some role in causing change, he expects mainstream science will not be ignored in Washington during the Trump administration.

"Looking at the Trump administration, looking at the future, it's where the science meets policy," he said. "For people who believe we're creating a climate crisis, there are still affordable abundant energy options that would significantly reduce greenhouse gases. Nuclear power is emissions-free; hydropower is emissions-free; natural gas cuts emissions in half."

Correction: A previous version of this story inaccurately described energy company spending on the Heartland Institute and its conference.

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